

1 AMENDMENT TO HOUSE BILL 774

2 AMENDMENT NO. _____. Amend House Bill 774 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Trusts and Trustees Act is amended by
5 adding Section 5.3 as follows:

6 (760 ILCS 5/5.3 new)

7 Sec. 5.3. Investing for total return. With the consent
8 of the beneficiaries then entitled to receive or eligible to
9 have the benefit of the income, and in the absence of
10 specific direction to the contrary by the settlor in the
11 trust documents, a trustee may, but is not required to,
12 invest for total return. A trustee invests for total return
13 when the trustee, exercising reasonable business judgment,
14 invests the trust's portfolio with the object of increasing
15 the total return from the trust's investments expected over
16 the life of the trust without regard to whether the return
17 takes the form of current income or capital gain.

18 If a trustee invests for total return, the income of the
19 trust shall be credited with income from the trust's
20 investments in accordance with the Principal and Income Act,
21 and shall also be credited, first from realized capital gain,
22 and then from unrealized capital gain, but only to the extent

1 either gain exists, with the additional income amount. As
2 used in this Section, "additional income amount" means the
3 amount of additional trust accounting income, if any, that
4 would have been earned by the trust had the trustee invested
5 without regard to a total return approach and the trust's
6 portfolio had been allocated among asset classes solely in
7 accordance with the duty to balance the needs of income
8 beneficiaries for trust accounting income and the interests
9 of remaindermen in growth of principal. In determining the
10 amount of additional trust accounting income that would have
11 been generated from the portfolio allocation, the trustee
12 may use the average current income return for market indices
13 that are customarily used by trustees in the measurement of
14 investment performance for each such asset class.

15 The trustee shall credit the income of the trust with the
16 additional income amount within a reasonable time after the
17 close of the trust's tax year, and shall calculate realized
18 and unrealized capital gains as of the close of the trust's
19 tax year on average over the 3 preceding tax years (or, if
20 the trust has existed for less than 3 years, over the lesser
21 number of years).

22 A trustee's judgment concerning any portfolio allocation,
23 any additional income amount, or investing for total return
24 under this Section may be challenged if it was an abuse of
25 discretion. A court may determine that a trustee abused its
26 discretion if the trustee's judgment was inconsistent with
27 the prudent investor rule, but not merely because the court
28 would have made a different judgment. A beneficiary who
29 challenges a trustee's judgment has the burden of
30 establishing that it was an abuse of discretion.

31 A trustee shall notify the primary beneficiaries, as
32 defined in Section 16.1 of this Act, of its election to
33 invest for total return and the election shall remain in
34 effect until revoked by a notice from the trustee to the then

1 primary beneficiaries.".